

## Northeast Dairy Compact Commission

## § 1361.1

(b) Subtract 50% from the total value computed pursuant to paragraph (a) of this section to be used for the per farm payments to producers who submitted documentation pursuant to §1309.4(a);

(c) Divide the resulting amount by the sum of all milk production reported by producers qualified pursuant to §1309.1 and who submitted documentation pursuant to §1309.4(a).

### § 1309.3 Supply management-settlement fund.

(a) The compact commission shall establish and maintain a separate fund known as the supply management-settlement fund. It shall deposit into the fund all amounts deducted pursuant to §1306.3(e) of this chapter. It shall pay from the fund all amounts due producers pursuant to §1309.4;

(b) All amounts subtracted under §1309.2(c), including interest earned thereon, shall remain in the supply management-settlement fund as an obligated balance until it is withdrawn for the purpose of effectuating §1309.4;

(c) The compact commission shall place all monies subtracted under §1306.3(e) of this chapter in an interest-bearing bank account or accounts in a bank or banks duly approved as a Federal depository for such monies, or invest them in short-term U.S. Government securities;

(d) If, after payments to producers of supply management refund pursuant to §1309.4 there is a surplus in the fund, it is to be returned to the producer-settlement fund.

(e) The supply management program will continue through the operation of the compact over-order price regulation. If the refund year is six months or less, the supply management-settlement fund is to be returned to the producer-settlement fund.

### § 1309.4 Payment to producers of supply management refund.

(a) All producers who are qualified pursuant to §1309.1 shall become eligible to receive payment of the supply management refund computed pursuant to §1309.2 by submitting to the compact commission documentation that the producer milk production during the refund year is less than or the increase is not more than 1% of the

milk production of the preceding 12 month period. Such documentation shall be filed with the commission not later than 45 days after the end of the refund year.

(b) The commission will make payment to all producers qualified pursuant to §1309.1 and eligible pursuant to paragraph (a) of this section in the following manner:

(1) A per farm payment computed by dividing the amount subtracted pursuant to §1309.2(b) by the total eligible producers; and

(2) The value determined by multiplying the supply management refund price computed pursuant to §1309.2(c) by the producer's milk pounds, not to exceed \$12,000.

[66 FR 23833, May 10, 2001]

## PART 1361—RULEMAKING PROCEDURES

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AUTHORITY: 7 U.S.C. 7256.

SOURCE: 63 FR 37756, July 14, 1998, unless otherwise noted.

### § 1361.1 Applicability.

This section applies to:

(a) The establishment of a compact over-order price regulation, as defined in subsection 2(8) of the Compact, including any provision with respect to milk supply under subsection 9(f) of the Compact;

(b) Any amendment of such over-order price regulation or provision with respect to milk supply; and

(c) Any process initiated by the Compact Commission in which the subjects and issues involved relate to such price regulation or provision with respect to

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milk supply or, proposed amendment thereto.

### § 1361.2 Commencement of proceedings.

(a) *Upon the Commission's initiative.* The Compact Commission may commence a rulemaking proceeding on its own initiative, including upon the recommendation of the Committee on Regulations and Rulemaking.

(b) *Upon the request of a state delegation.* A state delegation may request the initiation of a rulemaking proceeding by presenting its request to the Committee on Regulations and Rulemaking. The Committee on Regulations and Rulemaking shall make a recommendation to the Compact Commission, through the Chair, as to whether the state delegation's request should be pursued; provided that the state delegation may in any event place its request before the Compact Commission for its consideration.

(c) *Upon petition of any person or organization.* In its sole discretion, the Compact Commission may commence a rulemaking proceeding upon petition of any person. Such persons or organizations may include individual milk producers or handlers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state or federal officials.

(1) A person or organization petitioning for commencement of a rulemaking proceeding shall submit to the Compact Commission a statement in support of the petition. This statement shall include a brief written explanation of how the proposal will promote the purposes of the Compact.

(2) Petitions submitted under this paragraph shall be forwarded to the Committee on Regulations and Rulemaking for review. If that Committee determines the proposal will tend to promote the purposes of the Compact, the Committee shall notify the Chair of its determination. The Chair shall then convene the Compact Commission to determine whether the Commission desires to initiate a rulemaking proceeding based upon the petition.

(3) If the Committee on Regulations and Rulemaking determines the proposal will not tend to promote the pur-

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poses of the Compact, the Committee, through the Chair, shall promptly notify the petitioner of its decision. Notice of denial shall include a brief statement of the grounds for the denial. Upon the request of the petitioner, and in the discretion of the Chair, the Commission may review the denial of a petition by the Committee on Regulations and Rulemaking.

(d) *Commencement of proceedings.* At the discretion of the Compact Commission, the Chair shall commence any rulemaking proceeding. The Chair shall commence the proceeding by serving notice in accordance with § 1361.3.

### § 1361.3 Notice.

(a) *Contents of the notice—subject matter.* Notice filed by the Chair of the Commission shall include a concise summary of the proposed price regulation and provision with respect to milk supply, or proposed amendment, or a concise statement that such regulation or amendment is the subject and issue involved. If for specific, proposed regulation or amendment, the notice shall identify the geographic area and persons to be covered, and a proposed effective date. The notice shall also identify the Compact as the legal authority under which the price regulation is proposed.

(b) *Contents of the notice—date, time and place of hearing.* Notice shall be given of the date, time and place of the hearing to be held by the Compact Commission in accordance with section 11 of the Compact. The date of the hearing shall be at least 15 days after the publication of notice as provided in paragraph (d) of this section.

(c) *Right to provide comment.* The notice shall identify the right of any person to participate in the rulemaking proceeding by the submission of written comment, either as part of, or independent of, the hearing.

(d) *Publication of notice and supplemental publicity.* The Chair shall give notice under this section as follows:

(1) By publication in the FEDERAL REGISTER;

(2) By publication in the official register of each participating state and as otherwise required by the laws of the states. If the laws of a particular state

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do not require publication of notice in a newspaper of general circulation within that state, the Compact Commission shall provide for such publication; and

(3) By correspondence to interested persons in accordance with a list of such persons compiled by the Compact Commission. Any interested person may have his or her name added to the list by making a written request to the Compact Commission.

(e) Notice may also be provided by:

(1) Forwarding copies of the notice to the governors of such other states as the Chair determines should be notified; or

(2) At the discretion of the Compact Commission, by issuance of a press release containing the contents of the notice or a summary of the contents of the notice to those newspapers in the area proposed to be subjected to regulation as will reasonably tend to bring the notice to the attention of interested persons; or

(3) Such other notice as directed by the Compact Commission.

### § 1361.4 Submission of written comment and exhibits independent of the hearing.

Any person may submit to the Compact Commission written comment and exhibits independent of the hearing. Comment and exhibits may be submitted at any time until the closing date of the post-hearing comment period established under § 1361.7. The comment and exhibits shall be made part of the record of the rulemaking proceeding if they identify the author's name, address and occupation and if they include a sworn, notarized statement indicating that the comment is presented based upon the author's personal knowledge or belief.

### § 1361.5 Conduct of the hearing.

(a) *Presiding officer.* The Chair of the Commission shall be the presiding officer, or in his or her absence, the Vice-Chair. In the absence of either officer, the Compact Commission shall elect a presiding officer from those members present at the hearing or retain a qualified member of the public to serve as presiding officer.

(b) *Authority of the presiding officer.* The presiding officer shall have the authority to:

(1) Regulate the course of the hearing;

(2) Administer oaths and affirmations;

(3) Rule upon issues of evidence and procedure and receive affidavits; and

(4) Present questions to the Compact Commission for its determination.

(c) *Recording of notice.* At the opening of the hearing, the presiding officer shall certify for the record the provision of notice under § 1361.3.

(d) *Transcript.* The Secretary of the Compact Commission shall cause a complete transcript to be kept of the hearing proceeding. The Secretary shall certify a true copy of the record of all testimony and exhibits entered into evidence.

(e) *Appearance; right to appear.* Any person shall be given an opportunity to appear, either in person or through a representative, subject to reasonable procedures (*e.g.*, regarding time allowed for testimony) established by the presiding officer. Witnesses shall provide their names, addresses and occupations for the record before proceeding to testify. A person acting as representative on behalf of another shall so identify himself or herself, provide his or her name, address and occupation for the record, and shall provide any other information as required by the presiding officer.

(f) *Testimony.* Persons shall be sworn or make affirmation before testifying. Any member of the Compact Commission or designated staff may ask questions of a person giving testimony.

(g) *Evidence.* To the degree possible, evidence shall be presented in a form consistent with the provisions of section 9(e) of the Compact. Evidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonably prudent persons shall be admissible. Evidence that is irrelevant, immaterial or unduly repetitious shall be excluded. As possible, the relevancy of evidence shall be determined by reference to the provisions of section 9(e) of the Compact.

(1) *Exclusion of evidence; objections and offers of proof.* The presiding officer

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may act to exclude evidence on his or her own or upon a request by any Compact Commission member. The person testifying may object to a ruling to exclude evidence. The person shall state the reasons for the objection, and provide an offer of proof, consisting of a statement of the substance of the testimony or that which is expected to be shown by the answer; provided that the presiding officer may limit the length of time allowed for the offer of proof. The record shall reflect the objection, the stated basis for the objection and the offer of proof. The presiding officer shall either overrule the objection, and exclude the evidence from the record, or stay a ruling on the objection to permit action by the Compact Commission at a future time. If the Compact Commission, upon consideration of the objection and offer of proof, permits the evidence, it shall reopen the record and allow the testimony to be entered. Only evidence so received by proper objection and offer of proof may be the subject of future consideration. The person testifying shall be notified within three days of the Compact Commission's ruling on the objection.

(2) *Exhibits, documentary and real evidence.* All written statements, charts, tabulations or similar data offered in evidence at the hearing shall be made part of the record upon identification by the witness and upon satisfactory showing of its authenticity, relevance and materiality. At the discretion of the presiding officer, any part of an exhibit that is irrelevant or immaterial may be excluded and the remainder admitted.

(3) *Cost conclusions.* Conclusory statements regarding costs shall be admissible only if supported by actual cost data based on actual operations of producers, handlers or retailers, as appropriate. Projections or estimates of costs shall be considered only where the actual costs or other data upon which such projections or estimates are provided as part of the analysis.

(4) *Commission evidence.* The Compact Commission may introduce the results and data of any inquiry or investigation conducted by the Commission, or any other evidence it deems appropriate. The Commission may also designate as evidence all or part of the

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record of prior hearings before the Commission.

(5) *Official notice.* The Compact Commission may take official notice of such matters as are judicially noticed by the courts of the United States and any other matter of technical, scientific or commercial fact of established character. Matters taken by official notice shall be so designated in the record. Interested persons shall be given adequate notice of this action, at the hearing or afterward, and opportunity to demonstrate that the facts are inaccurate or were erroneously noticed.

### § 1361.6 Availability of the transcript.

(a) *Availability.* A copy of the hearing transcript shall be available for review at the Compact Commission place of business during its official business hours, within 48 hours of the completion of the hearing, unless otherwise specified by the presiding officer at the close of the hearing.

(b) *Copies.* A copy of the transcript may be obtained upon written request and payment of reasonable cost per page.

### § 1361.7 Additional comment and proposed findings by interested persons.

At the conclusion of the hearing, the presiding officer shall announce that persons who have participated in the hearing may submit comment and proposed findings of fact. The comment or findings, or both, shall be received within fourteen calendar days of the conclusion of the hearing, unless otherwise specified in the published notice of proposed rulemaking. Any proposed findings shall be presented in a form consistent with the finding requirements of § 1361.8, and shall be based solely on evidence included in the record. Page numbers of the transcript, where supporting evidence appears, shall be cited whenever possible.

### § 1361.8 Commission deliberation and decision; proposed regulation; proposed findings.

(a) *Commission deliberation and decision.* The Compact Commission shall

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convene as a whole as soon as is practicable after the close of the post-hearing comment period. In accordance with the requirements of section 4 of the Compact, the Commission shall vote to decide whether to propose for referendum a Compact over-order price regulation and provision with regard to milk supply, or amendment thereof. A majority of the individual Commission members, with at least one member from each delegation, shall constitute a quorum for this deliberative meeting of the Compact Commission.

(b) *Proposed regulation.* If approved, the Compact Commission shall devise the proposed price regulation, and provision with respect to milk supply, or an amendment, by incorporating those provisions of sections 9 and 10 of the Compact as are necessary and appropriate. The regulation shall be set forth in sufficient detail so as to provide sufficient notice of its requirements to those subject to the regulation.

(c) *Proposed findings.* If a proposed regulation or amendment is approved, the Compact Commission shall prepare proposed findings of fact, in a form consistent with the requirements of section 12 of the Compact, with respect to:

(1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers;

(2) What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes;

(3) Whether the major provisions of the regulation or amendment, other than those establishing the Compact over-order price, are in the public interest and are reasonably designed to achieve the purposes of the regulation or amendment; and

(4) The need for a producer referendum in accordance with part 1371.

### § 1361.9 Effective date of regulation.

A Compact over-order price or amendment approved by referendum under part 1371 shall become effective in accordance with a schedule for administration established between the

Compact Commission and the applicable Federal Market Order Administrator. Notice of the substance of the approved regulation or amendment, including the effective date, shall be given in accordance with § 1361.3. In addition, the Compact Commission shall ensure actual notice by certified mail, return receipt requested, to all milk processors who will be subject to the terms of the regulation on the effective date. The Compact Commission may provide notice to any other interested persons.

### § 1361.10 Handler's right to petition for administrative review; Judicial review.

(a) *Petition.* In accordance with section 16(b) of the Compact, and pursuant to the provisions of part 1381, any handler subject to an order of the Compact Commission establishing a Compact over-order price regulation may petition the Commission for hearing and review.

(b) *Judicial review.*—In accordance with the provisions of section 16(c) of the Compact, such handler shall have a right to judicial review of the Compact Commission's ruling with respect to the handler's petition for review.

### § 1361.11 Ex parte communications.

(a) Following notice of a rulemaking proceeding, pursuant to § 1361.3, and prior to the conclusion of a producer referendum, or the final decision of the Commission, whichever is later, no Compact Commission member or Commission staff person shall communicate, either directly or indirectly, in connection with the merits of the rulemaking proceeding with any person having an interest in the proceeding or with any representative of such person.

(b) Following notice of a rulemaking proceeding, pursuant to § 1361.3, and prior to the close of the comment period, pursuant to § 1361.7, Compact Commission members shall not discuss among themselves the merits of the rulemaking proceeding.

(c) A Compact Commission member or Commission staff person who receives a written or oral communication prohibited by this section shall disclose the substance of such communication

on the record. As necessary and appropriate, the Commission may act accordingly to nullify the effect of the prohibited communication.

(d) This section shall not be construed to apply to requests for status reports or requests on other procedural matters.

[63 FR 37756, July 14, 1998, as amended at 64 FR 18324, Apr. 14, 1999]

## PART 1371—PRODUCER REFERENDUM

### Sec.

- 1371.1 Definitions.
- 1371.2 Purpose.
- 1371.3 Referendum procedure.
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- 1371.5 Confidentiality of ballots.
- 1371.6 Publication of referendum results.
- 1371.7 Ballots.
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AUTHORITY: 7 U.S.C. 7256.

SOURCE: 63 FR 37758, July 14, 1998, unless otherwise noted.

### § 1371.1 Definitions.

As used in this part, and in addition to the terms defined herein, the terms defined in Article II, section 2 of the Compact and in 7 CFR part 1301 shall apply with equal force and effect.

*Approved by producers* means that at least two-thirds of the eligible producers who cast a vote approve the proposed order or amendment.

*Cooperative block vote* means a vote of approval or disapproval of a proposed order or amendment, cast in a producer referendum, by a qualified cooperative on behalf of its members or stockholders who are eligible producers.

*Eligible producer* means a producer who, during the representative period determined by the Commission, has been engaged in the production of milk, the price of which would be regulated under the proposed order or amendment.

*Producer referendum* means the balloting process by which the Commission determines whether a proposed order or amendment is approved by eligible producers.

*Qualified cooperative* means a cooperative association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended,

known as the Capper-Volstead Act, bona fide engaged in marketing milk, or in rendering services for or advancing the interests of producers of milk, but shall not include any cooperative which has been formed to act as a common marketing agency for both cooperatives and individual producers.

*Representative period* means that period of time designated by the Commission for the purpose of determining who is a producer eligible to participate in a producer referendum.

### § 1371.2 Purpose.

Prior to issuing, or amending, any regulation establishing a Compact over-order price regulation, including any provision with respect to milk supply, the Compact Commission shall conduct a producer referendum for the purpose of ascertaining whether the issuance or amendment of such regulation is approved by producers.

### § 1371.3 Referendum procedure.

The Commission shall certify the referendum procedure at the time it approves a final regulation. The referendum procedure shall include:

- (a) A designated representative period for determining eligible producers;
- (b) The date by which the ballots will be distributed to eligible producers and qualified cooperatives;
- (c) The date by which all qualified cooperatives must mail notices to eligible producer members as required by § 1371.9(b) and (c);
- (d) The date by which all ballots must be received at the Commission office;
- (e) A designated referendum agent; and
- (f) Any other procedures necessary for the conduct of the particular producer referendum.

### § 1371.4 Referendum agent.

The designated referendum agent shall:

- (a) Verify all ballots, cast individually or by block vote, with respect to timeliness, producer eligibility, cooperative identification, authenticity and other steps taken to avoid duplication of ballots.
- (b) Mark ballots determined to be invalid “disqualified” with a notation of